

Serial No. 10/051,049
Amdt. dated March 17, 2004
Reply to Office Action of Dec. 17, 2003

REMARKS/ARGUMENTS

The Examiner has rejected claims 15 to 22 under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 277,718 to Hart ("Hart") in view of US Patent No. 4,649,813 to Kehl ("Kehl") and US Patent No. 4,032,037 to Dubery et al. ("Dubery").

Applicant's invention is directed at an enclosure comprising a cavity defined in a surface; a lid sized to cover the cavity; support means inside the cavity positioned to support at least part of one edge of the lid and adjacent parts of adjacent edges of the lid, the lid being pivotable downwardly about **flat** terminal portions of the support means under downward pressure on a region of the lid opposite the one edge; and a securing means for releasably engaging the lid in a position across the cavity.

The Examiner has suggested that Hart discloses an enclosure with a cavity and a lid sized to cover the cavity while Kehl discloses a pivot means with the fulcrum arrangement as claimed. Dubery discloses an enclosure with a magnetic means for securing the closure in a specific position.

Applicant has amended the claims to include the subject matter that the terminal portions of the support means are flat. Although Kehl discloses a pivoting means, the pivoting means disclosed in Kehl require pivots 28, located on the bottom of the door 18, which rest in sockets 32 in order to assist in the pivoting process. These sockets are depressions within the support means and therefore do not provide a flat surface as claimed in amended claim 15. Applicant respectfully believes that Kehl could not be designed without sockets since they assist in preventing the door from falling into the garbage can when the door is pivoted.

With respect to Applicant's invention, the pivoting occurs between the bottom surface of the lid and the flat terminal portion of the support means. There is no requirement for sockets or depressions to be present.

Furthermore, the magnetic enclosure described in Dubery provides magnets which assist in keeping the garbage enclosure in an open position not in a closed position. Applicant respectfully submits that one skilled in the art would not include magnetic means of Dubery to the garage can of Kehl in an open position since users will wish to throw the garage away and have the lid closed at all times. Although Examiner has suggested that this is simple a reversal of parts, Applicant respectfully believes one would not combine the teachings of Dubery and Kehl to create a garbage receptacle that is constantly open.

Retraction of Examiner's rejection of Claims 15 to 22 is respectfully requested.

The Examiner has rejected claim 23 under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 277,718 to Hart ("Hart") in view of US Patent No. 4,649,813 to Kehl

Serial No. 10/051,049

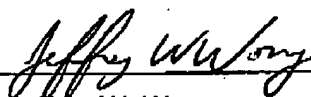
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("Kehl") and US Patent No. 4,032,037 to Dubery et al. ("Dubery") and further in view of US Patent No. 5,984,090 to Banfield ("Banfield"). In view of Applicant's amendment described above, Applicant respectfully believes that the Examiner's rejection is now moot since Applicant respectfully believes that amended Claim 15 provides patentable subject matter over Hart, Kehl, Dubery and Banfield. Retraction of Examiner's rejection of Claim 23 is respectfully requested.

Based on the foregoing, it is submitted that the application is in condition for allowance of Claims 15 to 23, which is respectfully requested.

Respectfully submitted,

By: 
Jeffrey W. Wong

Registration No. 46,414

Agent for Applicant

Borden Ladner Gervais LLP

100 Queen Street

Ottawa, Ontario

Canada K1P 1J9

Telephone: 519-741-9100

Fax: 519-741-9149

E-mail: jwong@blgcanada.com

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